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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 103

ESTATE OF GILLIAT G. SCHROEDER, DECEASED, LOUISA R. SCHROEDER AND HELEN S. CROLL, EXECUTORS, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum findings of fact and opinion of the Tax Court (R. 12-14) [1] are not reported. The opinion of the Court of Appeals (R. 21) is reported at 172 F. 2d 864.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1949. (R. 22.) The petition

[1] Record references are to the separately bound "Appendix to Petitioner's Brief".

for a writ of certiorari was filed June 6, 1949. The jurisdiction of this Court rests upon 28 U.S.C., Sec. 1254.

QUESTION PRESENTED

Whether, for estate tax purposes, the value of property the decedent transferred in trust in 1928 is includible in his gross estate under Section 811 (c) of the Internal Revenue Code as constituting the value of property the transfer of which he intended to take effect in possession or enjoyment at his death.

STATUTE INVOLVED

Internal Revenue Code:

> SEC. 811. GROSS ESTATE.
>
> The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States——
>
> * * * * *
>
> (c) *Transfers in Contemplation of, or Taking Effect at Death.*—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, * * * except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *
>
> (26 U.S.C. 1946 ed., Sec. 811.)

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STATEMENT

The facts of the case, which were all stipulated (R. 15-20) and found by the Tax Court (R. 13-14), may be summarized as follows:

The petitioner is the Estate of Gilliat G. Schroeder, deceased, who died a resident of New York City on October 3, 1942. The executrices of his estate are Louisa R. Schroeder and Helen S. Croll, both residents of New York City. (R. 13.)

On January 11, 1928, the decedent executed an indenture of trust under which the Title Guarantee and Trust Company, a corporation duly organized and existing under the laws of the State of New York, was named trustee. (R. 13.) By the terms of the trust, the decedent transferred to the trustee certain mortgages and mortgage certificates of the total value of $28,350 (R. 13) for the following uses and purposes (R. 19):

> * * * to hold or sell, manage, care for, protect, invest and reinvest the same or the proceeds thereof, to collect the income and interest thereof, and after paying all necessary charges and expenses of the trust, including the trustee's commissions, to pay over the net interest and income thereof to the party of the first part [decedent] for and during the term of his life, and on the death of the party of the first part, to pay, turn over and distribute the principal of the said trust estate in equal shares to and among HELEN STEVENS SCHROEDER and GILLIAT G. SCHROEDER, JR., the chil-

> dren of the party of the first part, or if said children or either of them shall not survive the party of the first part, then to pay, turn over and distribute the principal of the said trust estate to such of the said children of the said party of the first part as shall survive him and the issue of such of said children of the party of the first part as may have died leaving issue surviving, such issue to take the share or interest which his, her or their parent would have taken if living.

No part of the value of the trust property was included in the estate tax return filed by the executrices of the decedent's estate. The entire value of the trust property was included in the estate by the Commissioner. (R. 14.)

The Tax Court held that the value of the trust property is not includible in decedent's gross estate as a transfer intended to take effect in possession or enjoyment at decedent's death within the meaning of Section 811 (c) of the Internal Revenue Code. (R. 14.) The Court of Appeals reversed the decision of the Tax Court in open court on the authority of this Court's decision in *Commissioner* v. *Estate of Church,* 335 U. S. 632 (R. 21), which was decided while this case was pending on appeal.

ARGUMENT

This case presents issues that were recently canvassed in full in *Commissioner* v. *Estate of Church,* 335 U.S. 632, and *Estate of Spiegel* v. *Commis-*

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sioner, 335 U.S. 701. The decision below is in accordance with the results reached in those cases. There is no occasion for further review by this Court.

Petitioner's principal contention relates to a proposed change in the Treasury regulations that would give certain retroactive relief in cases where the *sole* basis for the tax was a reserved life estate. However, there is no such proposal under consideration that would eliminate the tax where the decedent had a reversionary interest (whether expressly reserved or arising by operation of law), and where the possession or enjoyment of the ultimate takers is postponed at least until the decedent's death. In this case, the decedent had reserved not only a life estate, but had failed to provide for disposition of the property in the event that he should survive his two children and their descendants. The Government has contended throughout that there is a reversionary interest here. And in deciding against the Government, the Tax Court made it plain (R. 14) that its decision was contrary to *Commissioner* v. *Bayne's Estate,* 155 F. 2d 475 (C.A. 2), which had held that a reversionary interest arising by operation of law was a sufficient interest to bring the statute into play. The rule of the *Bayne's Estate* case is now authoritatively established as correct by the decision of this Court in the *Spiegel* case, and there is no occasion for this Court to review

the decision below merely to determine whether a reversionary interest in fact exists under state law. Accordingly, whether or not the proposed change in the regulations should be adopted, giving certain retroactive relief where the sole basis for the tax is a reserved life estate, there is no reason for further review in this case.

CONCLUSION

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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JULY, 1949.

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